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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/848,255	05/04/2001	Dennis Charles Clemes	032228.0006	6320

30678 7590 10/20/2003

CONNOLLY BOVE LODGE & HUTZ LLP  
SUITE 800  
1990 M STREET NW  
WASHINGTON, DC 20036-3425

EXAMINER
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BRUENJES, CHRISTOPHER P

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 10/20/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/848,255

Applicant(s)

CLEMES ET AL.

Examiner

Christopher P Bruenjes

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to:
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 15.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

**DETAILED ACTION**

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 13, 2003 has been entered.

***WITHDRAWN REJECTIONS***

2. The 35 U.S.C. 103 rejection of claim 1 over Razeto et al in view of Clemes of record in Paper #3, Pages 2-4 Paragraph 1 has been withdrawn due to Applicant's arguments in Paper #15.

***NEW REJECTIONS***

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 6-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Clemes (USPN 5,106,596).

Clemes anticipates a two-stage sulfur dioxide generator comprising a first composite sheet, a second composite sheet, a plurality of pockets formed between the first and second composite sheets, a first stage sulfur dioxide generator comprising sodium metabisulphate arranged to be operable in at least one of the first and second composite sheets when water vapor is present, and a second stage sulfur dioxide generator comprising sodium metabisulphate arranged to be operable in each of the plurality of pockets (col.1, 1.17-27). Clemes further teaches that other substances that in the presence of moisture generate sulfur dioxide that can be substituted for sodium metabisulfate are an acidic mixture comprising sodium sulfite and fumaric acid or an acidic mixture comprising sodium sulfite and potassium bitartrate (col.2, 1.35-41).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
4. Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clemes (USPN 5,106,596) in view of Razeto et al (USPN 4,748,904).

Clemes teaches a first sheet comprising a paper substrate, a second sheet comprising a paper substrate and a first coating of a substance, which, in the presence of moisture, generates sulfur dioxide such as sodium metabisulfate. The sheets are bonded together to provide a series of closed pockets between the sheets, in which each pocket is has a powdered substance contained therein, which, in the presence of moisture, generates sulfur dioxide such as sodium metabisulfate (col.1, 1.17-27).

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Clemes further teaches that other substances that in the presence of moisture generate sulfur dioxide that can be substituted for sodium metabisulfate are an acidic mixture comprising sodium sulfite and fumaric acid or an acidic mixture comprising sodium sulfite and potassium bitartrate (col.2, 1.35-41). One of ordinary skill in the art would have recognized that these equivalent sulfur dioxide generators are substituted for sodium sulfate mentioned in column 1, lines 17-27.

Clemes fails to explicitly teach that the first and second sheets also comprise a coating of weldable synthetic plastics material on the surface facing the pockets. However, Razeto teaches a gas generator for preserving fruits and vegetables in which the sheets comprising paper substrates are thermal sealed to each other to form the pockets. Razeto further teaches that synthetic weldable plastics material such as polyethylene or PVC are coated on the inner surfaces of the paper substrate in order to facilitate the thermal seal of the individual sheets to each other (col.3, 1.1-21). One of ordinary skill in the art would have recognized that weldable synthetic plastics material are added to paper substrates forming gas generators for preserving fruits and vegetables in order to facilitate the thermal seal of the sheets when forming pockets while still preserving a permeable layer for moisture to penetrate, as taught by Razeto

et al. Note the concept of adding weldable synthetic plastics materials to paper substrates to facilitate thermal sealing is not dependent on what the material is that is generating gas for preserving.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the applicant's invention was made to add weldable synthetic plastics materials to the surface of the two sheets facing the pockets of Clemes in order to facilitate thermal sealing while maintaining moisture permeability, as taught by Razeto et al.

#### ***ANSWERS TO APPLICANT'S ARUGMENTS***

5. Applicant's arguments regarding the 35 U.S.C. 103 rejection of claim 1 have been fully considered but are moot since the rejection has been withdrawn.

#### ***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher P Bruenjes whose telephone number is 703-305-3440. The examiner can normally be reached on Monday thru Friday from 8:00am-4:30pm.

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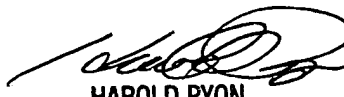
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 703-308-4251. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Christopher P Bruenjes  
Examiner  
Art Unit 1772

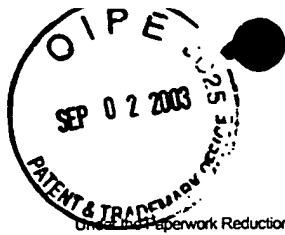
CPB

October 17, 2003

  
HAROLD PYON  
SUPERVISORY PATENT EXAMINER  
1772

10/17/03





PTO/SB/08a/b (06-03)

Approved for use through 07/31/2003. OMB 0651-0031

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<b>Substitute for form 1449A/B/PTO</b>  <b>INFORMATION DISCLOSURE STATEMENT BY APPLICANT</b>  (Use as many sheets as necessary)				<b>Complete if Known</b>	
				Application Number	09/848,255-Conf. #6320
				Filing Date	May 4, 2001
				First Named Inventor	Dennis C. Clemes
				Art Unit	1772
				Examiner Name	C. Bruenjes
Sheet	1	of	1	Attorney Docket Number	21919-00013-US

U.S. PATENT DOCUMENTS					
Examiner Initials*	Cite No. <sup>1</sup>	Document Number	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
		Number-Kind Code <sup>2</sup> (if known)			
CD	AA	US-4,487,791	12-11-1984	Komatsu, et al.	—

FOREIGN PATENT DOCUMENTS						
Examiner Initials*	Cite No. <sup>1</sup>	Foreign Patent Document	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear	T <sup>6</sup>
		Country Code <sup>3</sup> -Number <sup>4</sup> -Kind Code <sup>5</sup> (if known)				
CD	BA	EP-0 292 948 B1	11-30-1988	Detia Freyberg GMBH	—	
CD	BB	EP-0 571 228 A2	11-24-1993	Clemes, Dennis Charles	—	

\*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant. <sup>1</sup> Applicant's unique citation designation number (optional). <sup>2</sup> See Kinds Codes of USPTO Patent Documents at [www.uspto.gov](http://www.uspto.gov) or MPEP 901.04. <sup>3</sup> Enter Office that issued the document, by the two-letter code (WIPO Standard ST.3). <sup>4</sup> For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. <sup>5</sup> Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST. 16 if possible. <sup>6</sup> Applicant is to place a check mark here if English language Translation is attached.

NON PATENT LITERATURE DOCUMENTS				
Examiner Initials*	Cite No. <sup>1</sup>	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published.	T <sup>2</sup>	

\*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

<sup>1</sup> Applicant's unique citation designation number (optional). <sup>2</sup> Applicant is to place a check mark here if English language Translation is attached.

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Examiner Signature		Date Considered	10/16/03
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